

Message Text

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PASS DEPT. OF JUSTICE ANTI-TRUST DIVISION (JOEL DAVIDOW)
AND THE FEDERAL TRADE COMMISSION

E.O. 11652: N/A

TAGS: EIND,ETRD,EEC

SUBJECT: ANTI-TRUST: EC COMMISSION FINDS UNITED BRANDS ABUSED
ITS DOMINANT POSITION

1. SUMMARY: THE EC COMMISSION HAS FOUND THAT UNITED BRANDS
HAS ABUSED A DOMINANT POSITION IN THE WHOLESALE
BANANA MARKET IN SEVERAL EC COUNTRIES IT HAS FINED THE
COMPANY DOLS 1.2 MILLION. IT ALSO RULED THAT THE COMPANY SHOULD
REDUCE ITS BANANA PRICES IN CERTAIN EC COUNTRIES AND
DISCONTINUE CERTAIN RESTRICTIVE RESALE POLICIES END
SUMMARY.

2 THE EC COMMISSION HAS FOUND AFTER A LENGTHY INVESTIGATION
THAT THE AMERICAN FIRM, UNITED BRANDS,HAS VIOLATED ARTICLE 86
OF THE ROME TREATY BY ABUSING A DOMINANT POSITION IN
THE WHOLESALE BANANA MARKET IN SEVERAL EC COUNTRIES.
ALTHOUGH WE HAVE NOT YET SEEN THE COMMISSION'S DECISION,
A COMMISSION PRESS RELEASE CITES THE FOLLOWING SPECIFIC
ABUSES:

A) UNITED BRANDS ESTABLISHED SEPARATE NATIONAL MARKETS,
THUS SPLITTING UP THE EC,BY FORBIDDING ITS DISTRIBUTORS

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TO RESELL GREEN BANANAS SINCE ONLY GREEN BANANAS CAN
TRAVEL OVER LONG DISTANCES.

B) UNITED BRANDS SOLD ITS BANANAS AT RADICALLY DIFFERENT PRICES IN DIFFERENT MEMBER STATES WITH SELLING PRICES VARYING AS MUCH AS 100 PERCENT..

C) UNITED BRANDS REFUSED TO SUPPLY A DANISH CUSTOMER WITH UNITED BRAND'S " CHIGUITA" BANANAS DURING A TWO-YEAR PERIOD BECAUSE HE WISHED TO BUY BANANAS FROM OTHER SUPPLIERS.

D) BECAUSE OF THESE ABUSES THE COMMISSION IS IMPOSING A FINE OF 1 MILLION UNITS OF ACCOUNT (DOLS 1.2 MILLION). UNITED BRANDS IS ALSO REQUIRED TO:

- A) PERMIT ITS DISTRIBUTORS TO SELL GREEN BANANAS;
 - B) LOWER ITS WHOLESALE PRICES IN GERMANY,DENMARK AND THE BENELUX TO A LEVEL AT LEAST 15 PERCENT LOWER THAN THE CURRENT SELLING PRICE IN GERMANY;
 - C) INFORM THE COMMISSION DURING A TWO-YEAR PERIOD OF ITS SELLING PRICES ON THE ABOVE-MENTIONED MARKETS.
- IF UNITED BRANDS DOES NOT ELIMINATE THE GREEN BANANA RESELLING RULE BY FEBRUARY 1AND DROP ITS PRICES AS REQUIRED BY APRIL 1,IT WILL ON EACH COUNT BE FINED 1,000 UNITS OF ACCOUNT,(DOLS 1,200), PER DAY.

4. DURING A PRESS CONFERENCE ON DECEMBER 18 COMMISSIONER BORSCHETTE NOTED THAT THIS WAS THE FIRST TIME THAT THE COMMISSION HAD TAKEN A DECISION UNDER ROME TREATY ARTICLE 86 BASED ON A GLOBAL ANALYSIS OF THE SELLING POLICY OF A COMPANY. HE ALSO NOTED THAT IT IS THE FIRST TIME THAT THE COMMISSION IS REQUIRING A COMPANY TO LOWER ITS PRICES BECAUSE IT HAS FOUND THE PRICE ITSELF ABUSIVE. (THE COMMISSION DETERMINED THAT UNITED FRANDS WAS MAKING A PROFIT ON SALES IN IRELAND AT PRICES 80 PERCENT LOWER THAN THOSE IN THE BENELUX)..

5. IT IS REPORTED THAT UNITED BRANDS WILL APPEAL THE CASE TO THE EUROPEAN COURT OF JUSTICE. A SPOKESMAN FOR THE COMPANY SAID THAT THE COMMISSION IGNORED THE EXISTENCE OF COMPETITORS IN THE MARKET,THAT UNITED BRANDS HAS SUFFERED LOSSES IN SEVERAL EC COUNTRIES AND

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THAT THE COMPANY'S RELATIONSHIP WITH THE AGGRIEVED DANISH DISTRIBUTOR HAD BEEN RESTORED BY THE DANISH MONOPOLY BOARD BEFORE THE COMMISSION STARTED PROCEEDINGS FOLLOWING THE ORIGINAL COMPLAINT.

THE SPOKESMAN ALSO SAID THE GREEN BANANA RESALE POLICY WAS NECESSARY TO MAINTAIN QUALITY AND THE POLICY HAD BEEN PUT INTO EFFECT ON THE BASIS OF GUIDANCE BY COMMISSION OFFICIALS.

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